Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Billed Party Preference	)	CC Docket No. 92-77
for 0+ InterLATA Calls	)	

COMMENTS OF VALUE-ADDED COMMUNICATIONS, INC. ON PROPRIETARY 0+ CALLING CARDS

Glenn B. Manishin
BLUMENFELD & COHEN
1615 M Street, N.W., Suite 700
Washington, D.C. 20036
(202) 955-6300

Attorney for
Value-Added Communications, Inc.

June 2, 1992

SUMMARY

The Commission should use this expedited rulemaking proceeding to immediately establish validation and billing information rules which effectively prevent AT&T's remonopolization of the operator services market. AT&T has relentlessly exploited the loopholes in the Commission's lax enforcement of Communications Act obligations by converting its shared LEC/AT&T calling cards—validated as a matter of routine by other carriers for years—into so-called "proprietary" CIID cards, and by using the resulting leverage against hotels, motels and other traffic aggregators to stifle competition from smaller OSP competitors. To remedy this misleading and monopolistic conduct, opposed by many of the BOCs as well as AT&T's interstate OSP competitors, all "0+" calling cards, including AT&T's CIID cards, should be considered "public domain" resources, available for billing and validation by all carriers.

The need for this remedy far exceeds the Notice's suggestion that restricting use of "0+" dialing on proprietary calling cards may be an appropriate interim measure if billed party preference is ultimately determined to be in the public interest. First, AT&T's calling cards at issue are the direct product of long-standing discrimination, held unlawful by the Commission in the Cincinatti Bell Order in 1991. Although ignored in the May 8, 1992 Notice in this docket, the Commission's Cincinatti Bell Order made clear that the Communications Act's nondiscrimination obligations "apply equally to validation data for RAO or line-based cards that have been reclassified as CIID cards." Second, even if LEC account maintenance and validation activities for CIID cards are deemed insufficient to trigger the protections of Section 202(a) of the Act, AT&T's own conduct violates its Title II obligations as a dominant carrier. AT&T permits BOCs and other LECs to validate intraLATA calls

placed using AT&T's "proprietary" CIID cards, but denies validation information to other intraLATA carriers. Because Value-Added and many other OSPs compete with LECs for intraLATA operator services and calling card calls, AT&T discrimination in favor of some similarly situated carriers violates AT&T's independent Communications Act responsibilities.

Implementing a public domain requirement for 0+ calling cards is simple. Carriers should not be permitted to claim "proprietary" status for calling cards for which they accept calls dialed on a "0+" basis. If any carrier, including AT&T, does not restrict use of its calling cards to proprietary access methods (950 or 800), then that carrier should be required to make validation and billing information for its cards available to all other carriers. Since the Commission last year required all carriers, including AT&T, to establish 800 or 950 access arrangements, there is no reason for reluctance on the part of any carrier to establish a truly "proprietary" calling card. The choice of whether to block or intercept "proprietary" card calls dialed on a "0+" basis may be left to AT&T, but these are the only two options from which AT&T may lawfully choose.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Billed Party Preference for 0+ InterLATA Calls	)	CC Docket No. 92-77

COMMENTS OF VALUE-ADDED COMMUNICATIONS, INC. ON PROPRIETARY 0+ CALLING CARDS

Value-Added Communications, Inc. ("VAC"), by its attorney, hereby submits these comments in response to the Commission's Notice of Proposed Rulemaking ("Notice") in the captioned docket, FCC 92-169, released May 24, 1991, in which the Commission requests "expedited" comment on whether to place all "0+" calling cards in the public domain by requiring the sharing of billing and validation data.[1] VAC believes that the Commission must mandate the sharing of such information for AT&T's CIID cards in order to rectify AT&T's violation of the nondiscrimination provisions of the Communications Act and to effectively prevent AT&T's remonopolization of the operator services market.

AT&T's misleading and anticompetitive tactics in the operator services market have been apparent—and have repeatedly been brought to the Commission's attention—for more than one year. Faced with the prospect that its discriminatory arrangements with Cincinatti Bell Telephone Co. ("CBT") would be

---

[1] Notice, ¶¶ 43, 54. The Commission declared that it would treat this issue "under a special expedited pleading cycle," id. ¶ 36, although the "public domain" remedy was first proposed by MCI more than one year ago and was specifically requested in CompTel's December 20, 1991 "emergency motion." See Comments of MCI Telecommunications Corporation in CC Docket No. 91-35, at 3-7 (filed April 12, 1991); Emergency Motion for an Order Requiring AT&T to Cease Further Distribution of "Proprietary" CIID Cards and Permit Validation and Billing of Existing Cards Pending a Final Decision in this Docket, CC Docket No. 91-35 (filed Dec. 20, 1991). VAC supported the MCI proposal in its August 1991 comments in CC Docket No. 91-115 and reiterated its opposition to Commission delay in a March 1992 ex parte submission. See Letter from Dennis R. Casey to Alfred C. Sikes, March 4, 1992; filed in CC Docket No. 91-115. The Commission's continued delay in this matter is fundamentally prejudicial and works, once again, only to reward AT&T for its violations of the Communications Act.

ordered terminated at the conclusion of the Commission's lengthy two-year investigation, AT&T searched for some vehicle to use to maintain the "proprietary" calling cards which it had procured through CBT's preferential arrangements. AT&T eventually seized upon the idea of "converting" its unlawfully received CBT-issued cards and others into "proprietary" cards by "reissuing" them in CIID format.[2] The Commission eventually did order the AT&T/CBT card arrangements terminated,[3] and specifically ruled that its decision on "joint use" LEC cards would "apply equally to validation data for RAO or line-based cards that have been reclassified as CIID cards" and "irrespective of the conversion of any of these account numbers to the CIID format or any other numbering scheme."[4]

In the interim, AT&T's efforts to remonopolize the operator services market continued unabated. AT&T first initiated a massive marketing effort aimed at encouraging calling card customers to use "10XXX" access to "dial around" the presubscribed OSP carriers serving hotels, hospitals, universities and other traffic aggregators. Next, AT&T began entering into "teaming" arrangements with its former BOC card partners for joint bids on highly lucrative operator services institutional contracts, offering predatory commissions far exceeding the resources

---

[2] AT&T first entered into agreements with CBT and the Virgin Islands Telephone Company to issue AT&T cards using RAO codes, assigned by Bellcore, not available to any other interexchange carrier. In the MFJ proceedings, the Justice Department took the position that BOC validation of these AT&T cards was unlawfully discriminatory, and that either the BOCs must issue RAO codes to all interexchange carriers or require AT&T to reissue its RAO cards as CIID cards. Memorandum of the United States in Response to the Court's Order of December 12, 1989 Concerning BOC Acceptance of Interexchange Carrier Calling Cards in CIID Format, United States v. Western Elec. Co., Civil Action No. 82-0192, at 9-10 (D.D.C. Feb. 8, 1990). Bellcore capitulated to AT&T's subsequent demand that it amend the CIID format to include AT&T's RAO-based codes, thus allowing AT&T—but no other interexchange carriers—to introduce CIID cards without any change in its card numbers. See United States v. Western Elec. Co., 739 F. Supp. 1, 11 (D.D.C. 1990). In 1991, AT&T announced in late March that it planned to "convert" its installed base of RAO cards into CIID cards by the end of the year.

[3] Cincinnati Bell Telephone Co., Transmittal No. 518, CC Docket No. 89-323, 5 FCC Rcd 805, 808 (1990)("Investigation Order") and FCC 91-117, ¶¶ 19-20 (released May 24, 1991)("Final CBT Order"); see Cincinnati Bell Telephone Co., Transmittal No. 518, 4 FCC Rcd 5033 (CCB 1989)("Suspension Order"), 4 FCC Rcd 5735 (CCB 1989)("Designation Order"). This series of Orders will be referred to collectively as the "CBT Order."

[4] Final CBT Order, ¶¶ 24, 26.

of its smaller competitors. Finally, AT&T began "reclassifying" its shared cards as "proprietary" CIID cards, and initiated another intense marketing effort directed at aggregators which used its own refusal to allow validation of the cards by competing Operator Services Providers ("OSPs") as a threat to the commission revenues of its competitors' customers, for instance by noting prominently in special solicitations, through bold type and capital letters, that "OTHER COMPANIES CANNOT BILL FOR THESE CARDS AND DO NOT PAY COMMISSIONS ON CALLS MADE WITH THESE CARDS."[5] The end result of all of these activities is that AT&T has reinforced its dominant position in the operator services market, forced many of its OSP competitors out of business, and successfully evaded the Commission's efforts in the CBT investigation to curtail discriminatory calling card practices.

Despite the CBT Order ruling, therefore, AT&T is in precisely the same position that it was in before the Commission determined that its calling cards had been unlawfully obtained and discriminatorily withheld from validation by competing OSPs. As a remedy for this situation—both for the Commission's inexplicable delay in taking enforcement action and for AT&T's abuse of validation arrangements to protect its historic operator service monopoly—the Commission should immediately implement the "public domain" 0+ proposal first set forth by MCI in April 1991. AT&T has relentlessly exploited the loopholes in the Commission's lax enforcement of Communications Act obligations by converting its shared LEC/AT&T calling cards—validated as a matter of routine by other carriers for years—into so-called "proprietary" CIID cards, and by using the resulting leverage against hotels, hospitals, universities and other traffic aggregators to stifle competition from smaller OSP competitors. To remedy this misleading and monopolistic conduct, opposed by many of the BOCs as well as AT&T's interstate OSP competitors, all "0+" calling cards, including AT&T's CIID cards, should be

---

[5] Comments of MCI Telecommunications Corporation in CC Docket No. 91-35, Exhibit C at 1 (filed April 12, 1991).

considered "public domain" resources, available for billing and validation by all carriers.

The need for this remedy far exceeds the Notice's suggestion that restricting use of "0+" dialing on proprietary calling cards may be an appropriate interim measure if billed party preference is ultimately determined to be in the public interest. Notice, ¶ 42. First, AT&T's calling cards at issue are the direct product of long-standing discrimination, held unlawful by the Commission in the CBT Order in 1991. Although ignored in the May 8, 1992 Notice in this docket, the Commission's CBT Order made clear that the Communications Act's nondiscrimination obligations "apply equally" to shared joint use cards that have been "reclassified" as CIID cards. Final CBT Order, ¶ 24. AT&T should not be rewarded for its attempt to "end run" these holdings even if the Commission now concludes that "reclassification" should for some reason be permissible. The Commission has already rejected AT&T's baseless claim that its previous discriminatory calling card arrangements with Cincinnati Bell were "proprietary,"[6] and should do the same with its new claim for "proprietary" CIID cards used with the decidedly non-proprietary "0+" access arrangement.

Second, even if LEC account maintenance and validation activities for CIID cards are deemed insufficient to trigger the protections of Section 202(a) of the Act, AT&T's own conduct violates its Title II obligations as a dominant carrier. AT&T permits BOCs and other LECs to validate intraLATA calls placed using AT&T's "proprietary" CIID cards, but denies validation information to other intraLATA carriers. Because Value-Added and many other OSPs compete with LECs for intraLATA operator services and calling card calls, AT&T discrimination in favor of some similarly situated carriers violates AT&T's independent Communications Act responsibilities. Importantly, this point has been raised but never decided by the

---

[6] See Final CBT Order, ¶ 22 (rejecting AT&T's asserted "proprietary interest" in RAO-based calling card numbers).

Commission in this and related dockets,[7] and impacts AT&T's calling card options regardless of whether the cards are considered "joint use" LEC calling cards. As a Title II carrier AT&T is not permitted to unreasonably discriminate between similarly situated carriers, making it unlawful for AT&T to provide validation rights or data to some carriers for intraLATA traffic but withhold validation rights and data from other competing carriers for their intraLATA traffic.[8]

The Commission's Notice requests comment on how a 0+ public domain requirement would be implemented and would work. Notice, ¶ 43. Implementing a public domain requirement for 0+ calling cards is simple. Carriers should not be permitted to claim "proprietary" status for calling cards for which they accept calls dialed on a "0+" basis. If any carrier, including AT&T, does not restrict use of its calling cards to proprietary access methods (950 or 800), then that carrier should be required to make validation and billing information for its cards available to all other carriers. Since the Commission last year required all carriers, including AT&T, to establish 800 or 950 access arrangements, there is no reason for reluctance on the part of any carrier to establish a truly "proprietary" calling card. The choice of whether to block or intercept "proprietary" card calls dialed on a "0+" basis may be left to AT&T, but these are the only two options from which AT&T may lawfully choose.

---

[7] See Comments of Value-Added Communications, Inc., in CC Docket No. 91-115, at 10 (filed Aug. 15, 1991).

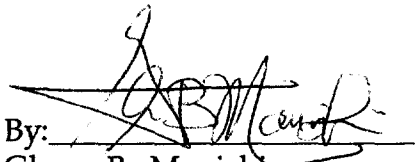
[8] The Commission clearly has jurisdiction over these intraLATA validation issues, since validation is performed on an interstate basis by means of querying LIDB or other carrier databases, and is subject to an interstate tariffing requirement. In addition, AT&T's CIID card utilize a Bellcore-assigned interstate numbering plan resource (CIID codes) which is subject to the Commission's exclusive jurisdiction. As former Common Carrier Bureau Chief Richard Firestone emphasized in directing Bellcore to develop guidelines and standards for central office code conservation, the FCC has "plenary jurisdiction over the national numbering plan." Telecommunications Reports, July 1, 1991, at 28. See, e.g., The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, 2 FCC Rcd 2910, 2912 (1987) (NANP "established [numbering] codes as a national resource of the United States" subject to the Commission's "plenary jurisdiction").

If AT&T or any other carrier desires to introduce a "proprietary" card for which it can restrict or eliminate validation by competing carriers, it has two choices. First, the interexchange carrier can issue a card without a telephone number or Bellcore-administered numbering plan resource (line number, RAO code or CIID code) involved. The "proprietary" nature of the card is ensured by the customized format developed and independently implemented by the carrier. Second, the carrier can utilize a card based on LEC telephone resources, but restrict access for calling card calls to a "proprietary" access mechanism—"800" or "950" instead of "0+." The "proprietary" nature of this card is ensured not by the numbering format, but rather by the dialing arrangements. Either way, the choice, and responsibility for development of appropriate access arrangements, is up to the carrier; so long as a calling card is accepted by the issuing carrier for 0+ calls, it must be made available to all other carriers for validation and billing.

CONCLUSION

The Commission should immediately adopt the proposal for making "0+" calling cards a "public domain" resource by requiring that validation and billing information for all calling cards, in any format, which are accepted by the issuing carrier for "0+" calling be made available to all Operator Services Providers.

Respectfully submitted,



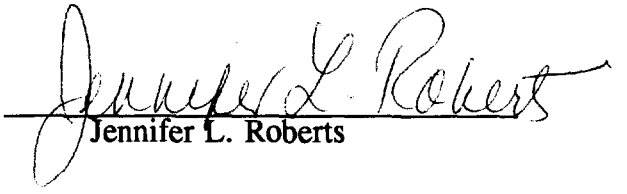
By: _____
Glenn B. Manishin
BLUMENFELD & COHEN
1615 M Street, N.W., Suite 700
Washington, D.C. 20036
(202) 955-6300

Attorney for
Value-Added Communications, Inc.

Dated: June 2, 1992.

CERTIFICATE OF SERVICE

I, Jennifer L. Roberts, do hereby certify on this 2nd day of June, 1992, that I have served a copy of the foregoing **COMMENTS OF VALUE-ADDED COMMUNICATIONS, INC. ON PROPRIETARY 0+ CALLING CARDS** via hand delivery to the parties on the service list below.



Jennifer L. Roberts

Cheryl A. Tritt
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

Gregory Voght
Chief, Tariff Review Branch
Federal Communications Commission
1919 M Street, N.W., Room 518
Washington, D.C. 20554

Colleen Boothby
Assistant Chief, Tariff Review Branch
Federal Communications Commission
1919 M Street, N.W., Room 518
Washington, D.C. 20554

Downtown Copy Center
Federal Communications Commission
1919 M Street, N.W., Room 246
Washington, D.C. 20554